

9 FAM 40.33 Notes

9 FAM 40.33 N1 Background and Summary of INA 212(a)(3)(C)

(TL:VISA-77; 3-30-93)

INA 212(a)(3)(C) was created by the Immigration Act of 1990, Pub. L. 101-649, and is loosely based on the portion of former INA 212(a)(27) pertaining to “activities which would be prejudicial to the public interest”. Under INA 212(a)(3)(C), the Secretary of State may exclude, under certain circumstances [see 9 FAM 40.33 N2 and 9 FAM 40.33 N3 below], any alien whose entry or proposed activities in the United States would have potentially serious adverse foreign policy consequences for the United States. The Department’s security advisory opinion is required in all cases of possible ineligibility under INA 212(a)(3)(C) [see 9 FAM 40.33 N4 below] and the Secretary of State must report all visa denials under that section to the appropriate committees of Congress [see 9 FAM 40.33 N5 below].

9 FAM 40.33 N2 Exception for Foreign Officials or Candidates for Government Office

(TL:VISA-77; 3-30-93)

An alien who is an official of a foreign government or purported government, or who is a candidate for election to a foreign government office, may not be excluded under INA 212(a)(3)(C) solely because of any past, current, or expected beliefs, statements, or associations which would be lawful in the United States. In such cases, exclusion must be based on factors related to the alien’s entry or proposed activities which go beyond the applicant’s beliefs, statements, and associations, and which have the requisite potential for serious adverse foreign policy consequences.

9 FAM 40.33 N3 Exception for Other Aliens

(TL:VISA-77; 3-30-93)

Aliens other than foreign government officials or candidates for government office may not be excluded because of their past, current, or expected beliefs, statements, or associations, if lawful in the United States, unless the Secretary of State personally determines that the alien’s admission would compromise a compelling U.S. foreign policy interest. It should be noted that “compromise a compelling United States foreign policy interest” is a significantly higher standard than the “have potentially serious

adverse foreign policy consequences” standard generally required for a finding of ineligibility under INA 212(a)(3)(C).

9 FAM 40.33 N4 Security Advisory Opinion Mandatory

(TL:VISA-77; 3-30-93)

All cases which the consular officer believes that the Secretary of State should consider a finding of ineligibility under INA 212(a)(3)(C) must be submitted to the Department for an advisory opinion. No visa may be issued or denied (other than under INA 221(g)) until the Department’s decision has been rendered. Advisory opinion requests must be submitted by means of a “VISAS DONKEY” telegram and include “DIR FBI WASHDC” as an action addressee. They should be directed to CA/VO/L/C and the appropriate geographic bureau. “VISAS DONKEY” telegrams must provide a summary of all information known to post, including a complete citation of any CLASS entry, as well as the post’s evaluation of the foreign policy implications of the alien’s entry or proposed activities and its recommendation regarding visa eligibility.

9 FAM 40.33 N5 Reports to Congress

(TL:VISA-77; 3-30-93)

Consular officers should be aware that section 128 of Pub. L. 102-138 added to the law a permanent requirement that the Secretary of State report, on a timely basis, to the Judiciary Committees of the House and Senate, the House Foreign Affairs Committee, and the Senate Foreign Relations Committee every denial of a visa “on the grounds of...foreign policy.” The Department has interpreted the words “on a timely basis” to mean within thirty days following the denial. Accordingly, whenever the Department renders an opinion that the entry or proposed activities of an alien would have potentially serious adverse foreign policy consequences within the meaning of section 212(a)(3)(C), the consular officer will be required to report promptly to the Department the precise date on which the alien’s application was denied for that reason. [See also section 40.32 N9.]